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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment of 73.213(a))
Grandfathered Short-Spaced)
Stations.)

RM-7651 ✓

96-120

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

APR - 8 1991

OPPOSITION OF THE NATIONAL ASSOCIATION OF BROADCASTERS

On February 1, 1991, the consulting engineering firms of du Treil, Lundin & Rackley, Hatfield & Dawson, and Cohen, Dippell & Everist ("consultants") filed a Joint Petition for Rule Making seeking modification of Section 73.213(a) of the Commission's Rules ("Joint Petition").¹ The consultants ask the Commission to begin a rule making proceeding designed to modify Section 73.213(a) to expand the potential facility improvements available to so-called "grandfathered" FM stations.² Because modification of Section 73.213(a) in the manner suggested would increase the risk of interference to authorized FM service, the National Association of Broadcasters ("NAB")³ urges the Commission to deny consultants' petition and, instead, concentrate its efforts on responding to the pending

¹Consultants' Petition was placed on FCC Public Notice on March 6, 1991 (Report No. 1839).

²"Grandfathered" FM stations are all FM stations in existence prior to November 16, 1964. Some of these stations, today, are short-spaced with other FM stations, as a result of the 1964 Commission adoption of minimum mileage separations.

³NAB is a non-profit incorporated association of radio and television broadcast stations and commercial broadcast networks.

reconsideration petitions in MM Docket 87-121 (FM Directional Antennas).⁴

Section 73.213(a) of the Commission's Rules permits short-spaced grandfathered FM stations to modify or relocate their facilities as long as: (1) the facility limits of Section 73.211 are not exceeded; and (2) the predicted distance to the 1 mV/m contour is not extended toward the 1 mV/m contour of any short-spaced station. Section 73.213(a) protects all FM stations from increases in interference by assuring that the ERP from grandfathered FM stations cannot be increased in the direction of the 1 mV/m contour of a protected short-spaced station.

The consultants ask the FCC to weaken significantly the protection afforded to all FM stations under current Section 73.213(a). First, instead of controlling ERP from grandfathered stations based on prediction of their 1 mV/m contour, the consultants ask the Commission to control ERP from grandfathered stations based on the prediction of their interfering contour -- a contour value that varies, depending on the class of FM grandfathered station and also on the channel relationship (e.g., co-channel, first adjacent channel, etc.) between the grandfathered station and the short-spaced station under study. Under the proposal of consultants, grandfathered stations could

⁴54 Fed. Reg. 9800 (March 6, 1989).

significantly increase ERP in the direction of short-spaced stations. The amount of the increase, in ERP, is occasioned by the difference in the calculation of FM service (F(50,50)) and FM interference (F(50,10)) contours and by including consideration of the class of short-spaced station in the direction of increasing ERP. Grant of consultants' request would adversely affect the service areas of many FM stations that are now protected from the risk of increasing interference through a significant increase in allowable ERP from short-spaced grandfathered stations.⁵ Short-spaced stations are, by definition, already interfering with each other at least under the standards of Section 73.207; increases in ERP toward any of these short-spaced stations will increase interference as compared to similarly situated, but properly-spaced stations.

Second, as a means to further permit increases in ERP toward short-spaced stations, consultants ask the Commission to ignore short-spacings to stations located on second or third adjacent channels. Consultants reliance on a 1964 FCC Decision⁶ is misplaced. That opinion permitted stations, at that time, to

⁵Consultants "public interest" analysis of two examples of potential increases in ERP available to grandfathered short-spaced stations does not consider the increased risk of interference to the affected short-spaced stations. Specifically, that any increase in power toward a short-spaced station will result in coverage loss for that station.

⁶Fourth Report and Order in Docket No. 14185, 3 RR 2d (P & F) 1571 (1964).

disregard short-spaced stations on second and third adjacent channels in making requests for increased facilities. The FM band is significantly more crowded in 1991 than in 1964; whatever evaluation of likely interference that was made at that time will not support a similar evaluation in 1991. We can think of not one conceivable public policy reason that would, in any way, support removing consideration of second or third adjacent channel interference from any of the Commission's rules. Ignoring second and third channel interference risks will, in fact, increase interference to the public. Consultants' claim that ignoring such interference risks may actually reduce interference to the public by enabling the improved signal "to serve areas and populations otherwise subject to interference"⁷ is simply wrong.

Consultants argue that some provision should be made for those grandfathered stations whose transmitter sites are located within the 1 mV/m contour of a second or third adjacent channel short-spaced station.⁸ In NAB's view, whatever interference is caused in these situations should not be allowed to increase through a more permissive change of Section 73.213(a). If the Commission plans to consider rule making to remedy consultants' concern, the Commission should insure that stations in these

⁷Joint Petition at 9.

⁸Id. at 6-7.

circumstances that wish to relocate are permitted to do so only, however, where interference to the public is reduced or remains unchanged, and all affected stations have given their consent. Applications that propose increases in interference should not be accepted for filing, whether or not affected stations have provided consent.

Consultants further request that, if prohibited contour overlap now occurs as a result of short-spacing, such overlap should not be increased.⁹ But such a policy leaves the short-spaced station's coverage area largely at the mercy of the grandfathered station. Under consultants' view, the grandfathered station could change facilities in a way that changes, perhaps significantly, the location of predicted interference within the protected contour of the short-spaced station. A short-spaced FM station should not have its service area put at risk by the prospect of a grandfathered short-spaced station modifying facilities in any way beyond that tolerated by Section 73.213(a). At a minimum, affected stations should be provided an opportunity to review and approve any proposed changes that might adversely affect their coverage areas.

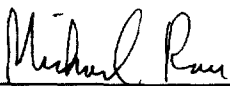
For the reasons above, NAB urges the Commission to deny consultants' requests. A rule making proceeding on the matters

⁹Id. at 3.

suggested by consultants would absorb Commission staff resources that better could be served elsewhere in FM policy development. The Commission has pending many petitions for reconsideration that were filed on April 7, 1989, in response to a Report and Order in MM Docket No. 87-121 (FM Directional Antennas).¹⁰ These petitions have not been acted upon and, in NAB's opinion, they raise far more serious questions and issues than consultants' Joint Petition. In allocating the Commission's scarce resources, consideration should be paid to acting on those rule changes that benefit the public interest in the largest and most effective way possible. NAB urges the Commission to address the very significant FM technical problems created by the rules adopted in MM Docket No. 87-121, rather than beginning rule making here.

Respectfully submitted,

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April 8, 1991

¹⁰See n.4 infra.

CERTIFICATE OF SERVICE

I, Judith L. Gerber, do hereby certify that a true and correct copy of the foregoing "Opposition of the National Association of Broadcasters" was sent, via first class mail, on this date, April 8, 1991, to the following:

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